

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 230 - SB 437

March 15, 2015

SUMMARY OF BILL: Creates a new sentencing factor for a violation or conspiracy to violate Tenn. Code Ann. § 31-14-103 (theft of property) or §§ 39-13-401-404 (robbery, aggravated robbery, especially aggravated robbery, and carjacking) occurring within the premises of any licensed pharmacy and committed for the purpose of obtaining, selling, delivering, giving, or exchanging a controlled substance.

At a minimum, requires each person sentenced under the bill to serve the minimum sentence for the offender's appropriate range.

Increases the maximum fine for offenders sentenced under the bill based on classification of the offense.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$384,700 Highest Projected Cost of the Next 10 Years/Incarceration*

Assumptions:

Admissions Relative to the Scope of the Sentence Enhancement

- The proposed legislation establishes enhanced sentencing for robbery, aggravated robbery, especially aggravated robbery, carjacking, and theft offenses if the offense occurred on the premises of a licensed retail pharmacy and was committed for the purpose of obtaining a controlled substance.
- Statistics from the Tennessee Bureau of Investigation's Crime in Tennessee Reports (http://www.tbi.state.tn.us/tn_crime_stats/stats_analys.shtml) indicate that an average of 1.28 percent of robberies in Tennessee occur within a medical facility.
- Statistics from the Department of Correction (DOC) show there has been an average of 3,033.5 admissions for robbery, aggravated robbery, especially aggravated robbery, carjacking, and theft offenses each year for the past 10 years. The proposed legislation could result in the following being enhanced each year:
 - Nine Class B felony admissions (721.7 Class B admissions x .0128 occurring at pharmacy);
 - Twelve Class C felony admissions (920.4 Class C admissions x .0128 occurring at pharmacy);
 - Thirteen Class D felony admissions (1,013.2 Class D admissions x .0128 occurring at pharmacy);

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- Four Class E felony admissions (346.8 Class E admissions x .0128 occurring at pharmacy).
- Most offenders are sentenced in Range I. The average time served for Class E, Class D, and Class C felonies are either equal to or greater than the minimum Range I sentence. The bill will only increase time served for Class B Range I offenders and Range II offenders for all classes of felonies.
- Sentencing enhancements could apply to plea bargains, but they are not applied in common practice. The bill will not affect admissions that result from plea bargains.

Assumptions Relative to Class B Felony Admissions

- The bill will apply to nine admissions per year for Class B felonies.
- The average time served for a Class B felony is 5.69 years. The minimum Range I sentence is eight years, and the minimum Range II sentence is 12 years.
- It is assumed that one admission will be sentenced at Range II and that the remaining eight will be sentenced at Range I.
- Population growth and recidivism will not affect the Range II admission, but will affect the Range I admissions.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for one (8 x .1178) additional Range I admission for a total of 9 (8 + 1).
- The bill will result in each applicable admission serving an additional 2.31 years (8 – 5.69).
- According to the DOC, 49.1 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.1 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (9 offenders x .491 = 4 offenders).
- It is assumed that three of the four admissions will result from plea bargains. Only one admission will be enhanced per year.
- According to the DOC, the average operating cost per offender per day for calendar year 2015 is \$66.03.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 2.31 years (843.73 days) for a total of \$55,711 (\$66.03 x 843.73 days).
- The bill will also result in one Range II admission being enhanced. The bill will result in the Range II admission serving an additional 6.31 years (12 – 5.69).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 6.31 years (2,304.73 days) for a total of \$152,181 (\$66.03 x 2,304.73 days).

Assumptions Relative to Class C Felony Admissions

- The bill will apply to 12 admissions per year for Class C felonies.

- The average time served for a Class C felony is 3.18 years. The minimum Range I sentence is three years, and the minimum Range II sentence is six years. The bill will only affect Range II admissions.
- It is assumed that two admissions will be sentenced at Range II and that the remaining ten will be sentenced at Range I.
- Population growth will not affect the Range II admissions.
- The bill will result in each Range II admission serving an additional 2.82 years (6 – 3.18).
- According to the DOC, 49.1 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.1 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (2 offenders x .491 = 1 offender).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender [2 offenders – 1 (recidivism discount)] serving an additional 2.82 years (1,030.01 days) for a total of \$68,012 (\$66.03 x 1,030.01 days).

Assumptions Relative to Class D Felony Admissions

- The bill will apply to 13 admissions per year for Class D felonies.
- The average time served for a Class D felony is 2.04 years. The minimum Range I sentence is two years, and the minimum Range II sentence is four years. The bill will only affect Range II admissions.
- It is assumed that three admissions will be sentenced at Range II and that the remaining ten will be sentenced at Range I.
- Population growth will not affect the Range II admissions.
- The bill will result in each Range II admission serving an additional 1.96 years (4 – 2.04).
- According to the DOC, 42.92 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.1 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (3 offenders x .491 = 1 offender).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two offenders [3 offenders – 1 (recidivism discount)] serving an additional 1.96 years (715.89 days) for a total of \$47,270 (\$66.03 x 715.89 days). The cost for two offenders is \$94,540 (\$47,270 x 2).

Assumptions Relative to Class E Felony Admissions

- The bill will apply to four admissions per year for Class E felonies.
- The average time served for a Class E felony is 1.41 years. The minimum Range I sentence is one year, and the minimum Range II sentence is two years.
- It is assumed that one admission will be sentenced at Range II and that the remaining three will be sentenced at Range I.

- Population growth will not affect the Range II admissions.
- The bill will result in each Range II admission serving an additional 0.59 years (2 – 1.41).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 0.59 years (215.50 days) for a total of \$14,229 (\$66.03 x 215.50 days).

Assumptions Relative to the Total Increase in Incarceration Costs

- The total increase in state incarceration costs is \$384,673 (\$55,711 + \$152,181 + \$68,012 + \$94,540 + \$14,229).

Assumptions Relative to the Courts, District Attorneys, and Public Defenders

- The bill does not create any new felony cases; it impacts sentencing. Though it will impact sentencing proceedings in criminal cases, it is assumed that the courts, district attorneys, and public defenders can accommodate any impact within their existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Jeffrey L. Spalding, Executive Director

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